

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

SHAWN FLOWERS-BEY,

Plaintiff,

v.

TAMARA ANDERSON, et al.,

Defendants.

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No. 2:19-CV-70-SRC

MEMORANDUM AND ORDER

This matter is before the Court upon self-represented plaintiff Shawn Flowers-Bey's (1) Motion for Leave to File an Amended Complaint, (2) Application to Proceed in District Court without Prepaying Fees or Costs, and (3) Motion to Appoint Counsel. For the following reasons, the Court will grant plaintiff leave to file his amended complaint, and deny as moot plaintiff's other two motions.

Background

On August 15, 2019, plaintiff filed his original prisoner civil rights complaint against thirteen defendants, all of whom were either correctional officers or medical staff at Northeast Correctional Center ("NECC"). Plaintiff alleged he had been diagnosed with severe back pain, and the officers at NECC were deliberately indifferent to this condition and retaliated against him by assigning him strenuous manual labor work duty.

On January 24, 2020, the Court conducted an initial review of plaintiff's complaint under 28 U.S.C. § 1915(e)(2)(B). The Court found plaintiff had stated a plausible claim for relief against defendants Tamara Anderson, Unknown Uebinger, Leslie Lebon, Kristine Cutt, John

Pierceall, Tanya Fielder, Unknown Armistead, and Alana Winter. The Court issued service on these defendants. The Court dismissed, however, defendants Dr. Michael Paniaugua, Bonnie Brennen, Dr. Tomas Cabrera, Warden Chantay Godert, and Sergeant Don Flies because plaintiff had failed to allege plausible claims as to these defendants. *See* ECF Nos. 5 and 6. The Court also granted plaintiff's application for leave to proceed in the district court without prepayment of fees and costs, and denied without prejudice plaintiff's motion for appointment of counsel. *Id.* at ECF No. 5.

Discussion

(1) Plaintiff's Motion for Leave to Amend

On February 5, 2020, after initial review but before any defendants had entered their appearances, plaintiff filed the instant motion to amend the complaint, submitting as attachments his proposed amended complaint and exhibits. In his motion, plaintiff states that he seeks leave to amend to add exhibits pertaining to his prison grievance procedure and to add "supporting factors for claim, and necessary corrections." The exhibits plaintiff seeks to add include plaintiff's grievance, grievance response, grievance appeal, conduct violations, and two disciplinary action reports. Also, possibly by oversight, plaintiff includes in the caption of his amended complaint the defendants the Court had already dismissed on initial review: Dr. Paniaugua, Bonnie Brennen, Dr. Cabrera, Warden Godert, and Sergeant Flies.

While leave to amend is to be freely granted, there are good reasons for denial "such as . . . repeated failure to cure deficiencies by amendments previously allowed . . . or futility of amendment." *Becker v. Univ. of Neb.*, 191 F.3d 904, 907-08 (8th Cir. 1999) (internal quotations omitted). Because the Court has already dismissed five of the defendants plaintiff names in the

caption of his amended complaint, the Court finds granting plaintiff leave to amend to add these defendants would be futile. Therefore, Court will grant plaintiff leave to file his amended complaint, however, will order the Clerk of Court not to add as parties the defendants that have already been terminated. *See* ECF Nos. 5 and 6.

(2) Plaintiff's Motion for Leave to Proceed in District Court Without Prepayment of Fees and Motion for Appointment of Counsel

Plaintiff has also moved again to proceed in the district court without prepayment of fees and costs and for appointment of counsel. The Court has previously granted plaintiff leave to proceed without prepayment of fees, so it will deny as moot this motion. As to counsel, the Court has previously stated that the appointment of counsel is not warranted at this time. This action involves straightforward questions of fact rather than complex questions of law and plaintiff appears able to clearly present and investigate his claims. The Court will again deny without prejudice plaintiff's motion for appointment of counsel.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for leave to file an amended complaint is **GRANTED**. [ECF No. 8]

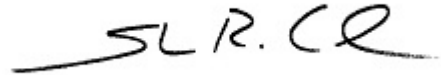
IT IS FURTHER ORDERED that the Clerk of Court is directed to detach and file plaintiff's amended complaint and exhibits A through C, which were submitted as attachments to plaintiff's motion for leave to amend.

IT IS FURTHER ORDERED that the following defendants have been previously dismissed without prejudice from this action and shall remain terminated parties: Michael Paniaugua, Bonnie Brennen, Tomas Cabrera, Chantay Godert, and Don Flies. *See* ECF No. 6.

IT IS FURTHER ORDERED that plaintiff's application to proceed in district court without prepaying fees or costs is **DENIED as moot**. [ECF No. 9]

IT IS FURTHER ORDERED that plaintiff's motion to appoint counsel is **DENIED without prejudice**. [ECF No. 10]

Dated this 9th day of July, 2020.

A handwritten signature in black ink, appearing to read "SLR. CLARK", written over a horizontal line.

STEPHEN R. CLARK
UNITED STATES DISTRICT JUDGE